

INTHEUNITEDSTATESDISTRICTCOURT  
FORTHEEASTERNDISTRICTOFPENNSYLVANIA

JOHN NIELEE CROPPS, III	:	
Plaintiff	:	
	:	CIVIL ACTION
v.	:	
	:	
CHESTER COUNTY PRISON, et al.	:	NO. 00-CV-182
Defendants.	:	

EXPLANATION and ORDER

Plaintiff Johnnie Lee Cropps filed this pro se action pursuant to 42 U.S.C. § 1983 alleging that various prison officials deprived him of adequate medical care in violation of the Eighth Amendment. In February of 1999, while he was an inmate at Chester County Prison (“CCP”), Cropps fell in a puddle of water that had formed around the base of a water fountain on the L block of the prison. <sup>1</sup>Plaintiff’s amended complaint, filed April 12, 2000, alleges that defendants, with deliberate indifference to his serious medical needs, failed to provide adequate treatment for the injuries he sustained as a result of the fall.

Plaintiff alleges that the following five defendants violated his Eighth Amendment rights:

- 1) Warden Masters, Warden of CCP during the relevant time;
- 2) C.O. 1 Pete Hamilton, the officer on duty in L block at the time of Cropps’ fall;
- 3) PrimeCare Medical, Inc. (“PrimeCare”), which oversees the medical unit of CCP;
- 4) Dr. Butler, an employee of CCP and PrimeCare, who allegedly treated Cropps on the

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<sup>1</sup>The date of the fall is disputed. In his complaint, Cropps states that he fell on February 23, 1999. Prison medical records report February 25, 1999 as the date of the fall.

day of the fall and thereafter;

5) and Mary Ellen Herbert, R.N.,<sup>2</sup> who serves as the contract administrator for PrimeCare overseeing the medical and psychiatric care provided to inmates at CCP.

Four motions are presently before me. Three are motions to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6): the first was filed by defendants Masters and Hamilton jointly, the second by defendant PrimeCare Medical individually, and the third by defendant Butler individually. The fourth, filed by defendant Herbert individually, is a motion to dismiss pursuant to Rule 12(b)(6) or, in the alternative, for summary judgment pursuant to Rule 56. The motion of Masters and Hamilton, as it relates to Masters, will be granted; as it relates to Hamilton, it will be granted in part and denied in part. The motion of PrimeCare will be granted; the motion of Butler will be denied; and the motion of Herbert will be granted in part and denied in part.

## I Legal Standard for a Motion to Dismiss

In deciding a 12(b)(6) motion, a court must view all factual allegations in the complaint and all reasonable inferences that may be drawn from the complaint in the light most favorable to the non-moving party. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969). Dismissal of claims under Rule 12(b)(6) should be granted “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

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<sup>2</sup>In his complaint, Cropps identifies this defendant as R.N. Elaine Herbert. She corrected her name in her motion.

Because Cropps' complaint is pro se, it must be held to less stringent standards than formal pleadings drafted by lawyers. Estelle v. Gamble, 429 U.S. 97, 106 (1976) (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). When reviewing a pro se complaint, a court must construe plaintiff's claims liberally. Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989); Roman v. Jeffes, 904 F.2d 192, 197 (3d Cir. 1990).

## II Alleged Eighth Amendment Violations

In order to state a claim that prison authorities provided inadequate medical care in violation of his civil rights, a plaintiff must allege acts or omissions on the part of defendants that evidenced deliberate indifference to his serious medical needs. Estelle, 429 U.S. at 106. The Estelle standard is two-pronged: a plaintiff must plead and prove both deliberate indifference on the part of all named defendants and the seriousness of his neglected medical needs. See Monmouth County Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326 (3d Cir. 1987).

### A. Seriousness

The "seriousness" of his medical need can be demonstrated, and the second prong of the Estelle standard met, if Cropps can show that this need is "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." Lanzaro, 834 F.2d at 347. The seriousness of the condition may also be determined by reference to the effect of denying or delaying care; if the denial or delay results in wanton infliction of pain or a life-long handicap or permanent loss, the medical need is considered serious. Id.

Given that standard, Cropps has alleged a serious medical need. He claims that, when he slipped and fell at the water fountain in February of 1999, he hit his head, shoulders and back on the cement floor of the prison and lost consciousness. A lay person would clearly recognize the necessity for prompt medical attention under such circumstances. Also, Cropps alleges that defendants' failure to provide proper treatment resulted in the onset of degenerative arthritis, a condition that may have disabled Cropps or caused him to suffer the permanent loss of certain body functions. Assuming the truth of those allegations, Cropps could prove as a matter of fact to support his claim that he had serious medical needs while inmate at CCP.

**B. Deliberate Indifference to a Serious Medical Need**

To state the requisite deliberate indifference to a serious medical need, the plaintiff must allege that the defendant knew of and disregarded "an excessive risk to inmate health or safety: the official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmerv. Brennan, 511 U.S. 825, 837 (1994). Mere allegations of negligence do not meet the pleading standards for deliberate indifference. See Estelle, 439 U.S. at 105-06 ("Medical malpractice does not become a constitutional violation because the victim is a prisoner."). Nor can the claim rest solely on the prisoner's dissatisfaction with the medical care he has received. Id. at 107. However, if prison authorities deny reasonable requests for treatment and thereby subject the inmate to pain or the threat of tangible residual injury, or if they delay treatment for non-medical reasons, deliberate indifference may be implicated. Lanzaro, 834 F.2d at 346-47. Deliberate indifference can also be manifested in a decision to deny an inmate access to a physician capable of determining

whether treatment is necessary. Id. at 347; see also Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979); Petrichkov. Kurtz, 52 F.Supp.2d 503, 508 (E.D. Pa. 1999).

If Cropps has failed to make the requisite allegation of deliberate indifference as to a defendant, then dismissal of his claims against that defendant under 12(b)(6) is appropriate.

1. Warden Masters

Cropps alleges that Masters, Warden of CCP at the time of his fall, violated his rights under the Eighth Amendment in negligently failing to respond to reports that the water fountain on L Block was broken.

Negligence is not a basis for liability under Section 1983, as it does not meet the standard of deliberate indifference. “More is needed than an naked averment that a tort was committed under color of state law.” Lanzaro, 834 F.2d at 346 (quoting Gittlemacker v. Prasse, 428 F.2d 1, 6 (3d Cir. 1970)). No set of facts that Cropps could prove against Warden Masters could transform this tort claim into a violation of constitutional rights; therefore, I will grant the motion to dismiss as to Warden Masters.

2. C.O. 1 Pete Hamilton

Cropps make two allegations against Hamilton, the officer alleged to be on duty in L block at the time of Cropps’ fall at the water fountain. First, Cropps alleges that Hamilton should have responded to inmate complaints about water pooling around the base of the fountain. Second, Cropps alleges that Hamilton, with deliberate indifference to Cropps’ serious medical need, waited 15-20 minutes to call medical security following the fall. During that delay, Cropps

alleges, he was allowed to lie unconscious in a pool of water on the cement floor.

The first allegation against Hamilton, which sounds only in negligence, cannot form the basis for a cognizable claim under Section 1983, and therefore I will grant the motion to dismiss that claim.

The claim that Hamilton failed to promptly call medical security following Cropps' fall survives the motion to dismiss. A lay person would easily recognize that a man who has hit his head, shoulders, and back on a cement floor and lost consciousness should receive immediate medical attention. The alleged facts suggest the possibility that Hamilton was deliberately indifferent to that need.<sup>3</sup> Non-medical reasons could have motivated the delay in calling for treatment. Hamilton may have acted deliberately in denying Cropps access to a physician capable of assessing his medical needs. Assuming the truth of the allegations, I cannot say at this stage that Cropps can prove a set of facts in support of his claim against Hamilton and therefore the motion to dismiss this claim against Hamilton is denied.

### 3. PrimeCare Medical, Inc.

In his amended complaint, Cropps names PrimeCare as a defendant because it "oversees the work of its employees; such as DR. BUTLER, and NURSE ELAINE (sic) HERBERT."

Cropps does not allege that any act or omission of PrimeCare caused him harm. His claims against it arise from the alleged failure of PrimeCare employees to provide proper medical

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<sup>3</sup>The amended complaint reads: "C.O. Hamilton waited 15-20 minutes before calling in the code to medical security, putting additional damages upon me." Construing this prose complaint liberally, I interpret that sentence as an allegation that Hamilton purposely delayed the call to cause Cropps additional harm.

treatment.

Even if Cropps could make the case that Prime Care employees violated his rights under the Eighth Amendment, the cause of action against Prime Care would fail. Section 1983 will not support a claim based on a respondeat superior theory of liability. See Polk County v. Dodson, 454 U.S. 312, 325 (1981) (citing Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 694 (1978)); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976). Since Cropps has alleged only that Prime Care is derivatively liable for the actions of its employees, the claim against it will be dismissed.

4. Dr. Butler

Cropps alleges that Dr. Butler was his treating physician on the day of the fall and throughout the rest of his time at CCP. In his amended complaint, Cropps has made five allegations against Butler. First, Cropps claims that Butler decided to release him from the infirmary one day after the accident, causing Cropps difficulties immediately upon release. Second, Cropps alleges that he put in for “Medical Sick-Call” because of numbness in his left arm and leg, headaches, and pain in his right shoulder, but Butler sometimes took several days to respond to those requests for treatment. Third, Cropps alleges that Dr. Butler cut off his medication, several times without telling Cropps. Fourth, Cropps alleges that Dr. Butler responded to his complaints of excruciating pain by saying “I think there’s nothing wrong with you.” Finally, Cropps alleges that Butler refused Cropps’ requests to see an orthopedist. Having since seen an orthopedic physician and begun sessions with a physical therapist, Cropps has allegedly discovered that Butler’s failure to provide adequate treatment caused him to develop a

serious case of degenerative arthritis. Dr. Butler's indifference to his pain and need for treatment, Cropps alleges, constitutes a violation of Cropps' Eighth Amendment rights.

The question at this stage is whether Cropps can prove any set of facts consistent with those allegations that would entitle him to relief on his Section 1983 claim against Dr. Butler.

Merely medical malpractice cannot give rise to an Eighth Amendment violation. Estelle, 429 U.S. at 106; White v. Napoleon, 897 F.2d 103, 108 (3d Cir. 1990); if the alleged inadequate care was the result of an error in medical judgment on Dr. Butler's part, Cropps' claim must fail. Durmer v. O'Carroll, 991 F.2d 64, 69 (3d Cir. 1993). However, if the failure to provide adequate care was deliberate, and motivated by non-medical factors, Cropps does have a claim. Id. Without the benefit of discovery, I cannot say as a matter of law that Butler's attitude toward Cropps was not one of deliberate indifference. At this juncture, plaintiff has made the bare showing necessary to survive the 12(b)(6) motion to dismiss as to Dr. Butler. See White, 897 F.2d at 109.

5. Mary Ellen Herbert, R.N.

In his amended complaint, Cropps sues Mary Ellen Herbert, R.N. in her official capacity as an employee of CCP and Prime Care Medical. Cropps alleges that Herbert "did violate my rights to medical care, in violation of my Federal Protected Right, Under the (8)th amendment."

A defendant in a civil rights action must have personal involvement in the alleged wrongs. Rodev. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (citing Parratt v. Taylor, 451 U.S. 527, 537 n.3 (1981) and Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1082 (3d Cir. 1976)). To show her personal involvement, Cropps must allege, with appropriate particularity, that Herbert personally directed or actually knew and acquiesced in the alleged



wrongs committed against him. Rode, 845 F.2d at 1207. As Cropps' amended complaint does not make such allegations against Herbert, it fails to state a cognizable claim under Section 1983. However, I will dismiss the claim against Herbert without prejudice, giving Cropps an opportunity to allege any personal involvement that Herbert may have had in the claimed violation of his Eighth Amendment rights.

### III Qualified Immunity

Defendants Masters and Hamilton submit that they are immune from suit. Under the qualified immunity doctrine, "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); accord Rouse v. Plantier, 182 F.3d 192, 196 (3d Cir. 1999). To determine whether defendants are entitled to qualified immunity, I must make a three-part inquiry: 1) whether plaintiff alleged a violation of his constitutional rights against these two defendants; 2) whether the rights alleged to have been violated were clearly established in the existing law at the time of the alleged violation; and 3) whether a reasonable official knew or should have known that his alleged conduct violated plaintiff's rights. See Rouse, 182 F.3d at 196.

Warden Masters, whom I have dismissed from the suit on Rule 12(b)(6) grounds, also raises a valid qualified immunity defense. See discussion supra Part II.B.1. Once a defendant pleads qualified immunity, the court must determine, as a threshold matter, the purely legal question of whether the plaintiff has asserted a violation of a constitutional right against that

defendant. See Seigartv.Gilley ,500U.S.226,232(1991); D.R.byL.R.v.MiddleBucksArea VocationalTechnicalSchool ,972F.2d1364,1368(3dCir.1992).Because no constitutional violation has been alleged as to Warden Masters, I will dismiss him from the suit not only pursuant to Rule 12(b)(6), but also on grounds of qualified immunity.

Because Cropps does state a cognizable Eighth Amendment claim against Pete Hamilton, the correctional officer who allegedly waited 15-20 minutes before summoning medical help after Cropps' fall, the issue becomes whether the constitutional right was clearly established at the time of the alleged violation. In 1976, the Supreme Court held that acts or omissions sufficiently harmful to evidence deliberate indifference to a serious medical need violate the Eighth Amendment's prohibition against cruel and unusual punishment. Estelle, 429 U.S. 97. In 1987, the Supreme Court said that "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Anderson v. Creighton, 483 U.S. 635, 640 (1987). The Court in Estelle instructed that the indifference required to state a cause of action under Section 1983 could be "manifested...by prison guards in intentionally denying or delaying access to medical care," Estelle, 429 U.S. at 104-05. In February of 1999, therefore, the unlawfulness of a prison guard delaying medical care to an inmate in serious need was apparent in the light of long-established law. Cropps' claim against Hamilton survives these second prong of the qualified immunity inquiry.

The third prong of the inquiry asks if a reasonable officer in Hamilton's position would or should have known that his conduct violated Cropps' rights. This prong involves an objective, but fact-specific inquiry; it requires consideration not only of clearly established law, but also of the information Hamilton possessed at the time of the alleged violation. See Anderson, 483 U.S.

at 641. Given the fact-specific nature of the required inquiry, resolution of the qualified immunity issue is inappropriate at this stage of the litigation. If discovery yields evidence tending to suggest that a reasonable officer in Hamilton's position should not have known that he was violating Cropps' rights, I welcome Hamilton to raise the qualified immunity defense at summary judgment.

An appropriate order follows.

**AND NOW**, on this day of January, 2001, it is **ORDERED** that:

1) The Motion to Dismiss Plaintiff's Amended Complaint of Defendants Warden Masters and C.O.I. Pete Hamilton, Pursuant to Fed.R.Civ.P. 12(b)(6) (docket entry no. 22), as it relates to Warden Masters, is **GRANTED**; as it relates to C.O.I. Pete Hamilton, it is **GRANTED** with respect to all claims involving negligent maintenance of the block L water fountain, and **DENIED** with respect to the claim that Hamilton waited for 15-20 minutes after Cropps' fall to call medical security;

2) The Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) of Defendant Prime Care Medical, Inc. (docket entry no. 33) is **GRANTED**;

3) The Motion of Defendant Dr. Butler Pursuant to Fed.R.Civ.P. 12(b)(6) to Dismiss Complaint for Failure to State a Claim upon which Relief Can be Granted (docket entry no. 24) is **DENIED**;

4) The Motion of Defendant Mary Ellen Herbert, R.N. to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) (docket entry no. 29, part 1) is **GRANTED** without prejudice; plaintiff is granted 20 days from the issuance of this order to amend his complaint to state particularized allegations of Herbert's personal involvement in the claimed violations of his constitutional rights. The motion of Defendant Mary Ellen Herbert for Summary Judgment Pursuant to Fed.R.Civ.P. 56 (docket entry no. 29, part 2) is **DENIED** without prejudice.

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ANITA B. BRODY, J.

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